

REMARKS**I. Introduction**

Applicant thanks the Examiner for acknowledging Applicant's claim to foreign priority.

II. Informal matters

The Examiner objects to the specification because of certain informalities. Applicant is making an appropriate correction.

The Examiner objects to claims 1, 5, 7 and 10 because of certain informalities. Applicant is making an appropriate correction.

III. Rejections under 35 U.S.C. §112

Claims 1-11 are pending in the subject application. Applicant added new claim 12, which recites subject matter previously recited in claim 5. Thus, no new matter was introduced.

The Examiner has rejected claims 5 under 35 U.S.C. §112, first paragraph, as failing to comply with written description requirement. The Examiner states that the specification fails to describe terms "SubSystem ID" and "SubVendor ID." Applicant respectfully traverses this rejection in view of the following argument. Specifically, Applicant respectfully points Examiner's attention to paragraphs [0009] and [0017] of the specification, which explain and give examples of "SubSystem ID" and "SubVendor ID." Accordingly, applicant respectfully submits that claim 5 complies with the written description requirement of 35 U.S.C. §112, first paragraph.

The Examiner has rejected claims 7 and 8 under 35 U.S.C. §112, second paragraph, as being indefinite. In response, Applicant makes the requisite correction. The amended claims are believed to be allowable.

IV. Rejections under 35 U.S.C. §102

The Examiner rejected claims 7 and 8 under 35 U.S.C. §102(a) as anticipated by McIntyre, U.S. Pat. No. 6,381,218. In support of the rejection, the Examiner states that McIntyre teaches the entire system recited in claims 7 and 8. Applicant respectfully traverses this rejection in view of the following arguments.

McIntyre appears to be directed to a system for determining status and configuration of a plurality of network ports using a data packet sent by one network port to another. Specifically, McIntyre teaches (see Abstract):

The driver system periodically determines and updates the status of each of the network ports, where the status of each is based at least on whether at least one directed packet has been received and transferred to the driver system by a respective network port. If any one of the network ports has not received a directed packet within a predetermined time period, the driver system commands another network port to transmit a directed heartbeat packet to the network port that has not received a directed packet. The team may include a primary and one or more secondary ports. The primary port sends a directed packet to any secondary port that has not received a directed packet within the predetermined time period. One or more of the secondary ports may each send a directed heartbeat packet to the primary port if the primary port has not received a directed packet within the predetermined time period.

Applicant respectfully calls the Examiner's attention that all ports in the McIntyre system are of the same physical layer, and, therefore, require the same software driver and act as a single device. McIntyre system uses multiple ports to achieve load balancing and fault tolerance, see McIntyre, Abstract. Therefore, McIntyre did not address the problem of using a single network interface to connect a computer to different physical network layers. Therefore, the device of McIntyre supports not a plurality of network physical layers but only one single layer.

On the other hand, claims 7 and 8 specifically recite a feature of the present invention wherein the inventive interface adapter supports a plurality of network physical layers. This feature of the present invention is not taught or suggested in McIntyre.

Furthermore, claims 7 and 8 specifically recite having a user select one of the network physical layers. This feature of the present invention is also not taught or

suggested by McIntyre. Indeed, because all ports in the McIntyre system are of the same type, a user may not make such a selection.

Applicant further points out that McIntyre fails to teach or suggest calculating a simulation device code corresponding to the selected network physical layer. Applicants carefully examined McIntyre and found no teaching or suggestion of user's selection of network physical layer as well as calculation of a simulation device code corresponding to the selected network physical layer.

When the PTO asserts that there is an explicit or implicit teaching or suggestion in the prior art, it must indicate where such teaching or suggestion appears in the reference. See In re Rijckaert, 28 U.S.P.Q.2d 1955,7 (Fed. Cir. 1993). The Examiner has clearly failed to do so. Therefore, claims 7 and 8 are not anticipated by McIntyre.

In case of 35 U.S.C. §102(a) rejections, every claim limitation must be taught in the prior art. Because McIntyre lacks the above specified teachings, it fails to anticipate the above claims 7 and 8.

V. Rejections under 35 U.S.C. §103

The Examiner has rejected claims 1-6 and 9-11 under 35 U.S.C. §103 as being unpatentable over McIntyre, U.S. Pat. No. 6,381,218, in view of Szczepanek, U.S. Pat. No. 5,321,819. The Examiner states that McIntyre teaches all limitations of the above claims with the exception of the components of network interface card (NIC). The Examiner further states that Szczepanek supplies the missing teaching. Applicant respectfully traverses this rejection in view of the following arguments.

Specifically, Applicant respectfully submits that neither McIntyre nor Szczepanek teach or suggest the limitations recited in the independent claims 1 and 8, wherein a user selects a network physical layer and wherein a simulation device code corresponding to the selected network physical layer is calculated. As stated above, McIntyre clearly lacks such a teaching. Applicant's careful examination of Szczepanek has shown that it also does not teach or even suggest the above-specified limitations.

When the PTO asserts that there is an explicit or implicit teaching or suggestion in the prior art, it must indicate where such teaching or suggestion appears in the reference. See In re Rijckaert, 28 U.S.P.Q.2d 1955,7 (Fed. Cir. 1993). The Examiner has clearly failed to do so. Therefore, claims 1 and 8 are not rendered obvious by the combination of references cited by the Examiner.

Finally, Applicant respectfully submits that claims 2-6 and 9-12 are patentable due to their dependency on patentable claims 1 and 8, and also due to the additional limitations recited in those claims.

VI. Conclusion

For all the forgoing reasons, it is respectfully submitted that all the pending claims are allowable. If for any reason the Examiner finds that the Application is not in condition for allowance, the Examiner is invited to contact Pavel Pogodin at (650) 954-6857.

Applicants hereby petition for any extension of time that may be required to keep this Application in prosecution.

Respectfully Submitted

/Dr. Pavel Pogodin/

Pavel Pogodin, Esq.

Reg. No. 48,205

Pavel Pogodin, Esq.
TransPacific Law Group
617 North Delaware Street
San Mateo, California 94401
(650) 954-6857
(650) 342-4403 Fax
e-mail: pavel@transpacificlaw.com

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